

## JONES DAY

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October 19, 2017

### **VIA ECF and Hand Delivery**

Hon. James Donato  
United States District Court  
450 Golden Gate Avenue  
Courtroom 11, 19th Floor  
San Francisco, CA 94102

**Re: *In Re Capacitors Antitrust Litigation*, No.: 3:14-CV-03264-JD**

Dear Judge Donato:

Since this Court's October 10, 2017 Order that all parties meet and confer regarding a proposed, amended case schedule, certain Defendants ("Defendants")<sup>1</sup> have diligently worked with each of the Plaintiff groups to craft a schedule addressing the issues identified by Your Honor, and others, during the October 10 hearing. Defendants negotiated a comprehensive proposed, amended schedule with all of the Plaintiff groups, including the additional opt-out plaintiffs, AASI, Avnet and Benchmark, which was to be filed on October 18, 2017, as the Court had ordered.

Late in the evening on October 18, Direct Purchaser Plaintiffs ("DPPs") and Indirect Purchaser Plaintiffs ("IPPs") informed Defendants that they would not agree to file the proposed, amended case schedule based on the Department of Justice's October 18, 2017 letter indicating that the government may seek a limited stay on certain depositions proceeding. Defendants took the view that the proposed, amended schedule should be filed regardless because it covered a

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<sup>1</sup> Defendants joining this letter include the following: AVX Corporation; ELNA Co., Ltd. and Elna America, Inc.; Nissei Electric Co., Ltd.; Hitachi Chemical Co., Ltd., Hitachi Chemical Co. America, Ltd. and Hitachi AIC, Inc.; Holy Stone Enterprise Co., Ltd., Holystone International, Vishay Polytech Co., Ltd., and Milestone Global Technology, Inc.; KEMET Corporation, KEMET Electronics Corporation, NEC TOKIN Corporation and NEC TOKIN America, Inc.; Matsuo Electric Co., Ltd.; Nichicon Corporation and Nichicon (America) Corporation; Nitsuko Electronics Corporation; Panasonic Corporation; Panasonic Corporation of North America; SANYO Electric Co., Ltd.; SANYO North America Corporation; ROHM Co., Ltd. and ROHM Semiconductor U.S.A., LLC; Rubycon Corporation and Rubycon America Inc.; Shinyei Kaisha, Shinyei Technology Co., Ltd., Shinyei Capacitor Co., Ltd., and Shinyei Corporation of America; Shizuki Electric Co., Inc.; Soshin Electric Co., Ltd. and Soshin Electronics of America, Inc.; Taitso Corporation and Taitso America, Inc.

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multitude of scheduling issues and Defendants assured DPPs and IPPs that if certain depositions could not be taken during the extended discovery period because of a stay Defendants would work with all Plaintiff groups to schedule such depositions at a later date. Instead, DPPs and IPPs opted to file their October 18, 2017 letter with the Court. (ECF No. 1905.)

Defendants regret that the parties could not complete and file a proposed, amended schedule as ordered by the Court. Defendants, however, believe that the parties have reached agreements in principle on all scheduling issues, with the exception of the concerns raised by DPPs and IPPs on how scheduling may or may not be impacted by the potential stay on certain depositions proceeding. The latest draft of the proposed, amended schedule that Defendants would have consented to file is attached for the Court's reference and for discussion purposes at the upcoming October 26, 2017 hearing. Defendants look forward to discussing these issues further with the Court during the October 26 hearing. Defendants will also make themselves available at the Court's convenience if the Court would like to address these issues in advance of the October 26 hearing.

Sincerely,

A handwritten signature in black ink, appearing to read "Eric P. Enson", with a long, wavy horizontal line extending to the right.

Eric P. Enson  
On Behalf Of Defendants

**UNITED STATES DISTRICT COURT**  
**FOR THE NORTHERN DISTRICT OF CALIFORNIA**  
**SAN FRANCISCO DIVISION**

**IN RE CAPACITORS ANTITRUST  
LITIGATION**

**Case No. 3:14-cv-03264-JD**

This Document Relates to:

All Actions

**JOINT STATEMENT, STIPULATION AND  
[PROPOSED] ORDER REGARDING  
SECOND AMENDED CASE SCHEDULE**

1 WHEREAS, on September 29, 2017, the DPPs, IPPs, Flextronics and Defendants  
2 submitted a proposed revised case schedule to the Court;

3 WHEREAS, additional opt-out actions have been filed by The AASI Beneficiaries  
4 Trust, by and through Kenneth A. Welt, Liquidating Trustee (“AASI”), Avnet, Inc. (“Avnet”), and  
5 Benchmark Electronics, Inc. and several of its subsidiaries (collectively, “Benchmark Electronics”,  
6 and together with AASI and Avnet, the “Recent Opt-Out Plaintiffs”);

7 WHEREAS, the AASI action has been transferred to this Court pursuant to 28 U.S.C. §  
8 1404;

9 WHEREAS, Defendants have filed with the Joint Panel on Multidistrict Litigation  
10 (“JPML”) a Motion to Transfer the Avnet and Benchmark actions to this Court for pre-trial purposes  
11 pursuant to 28 U.S.C. § 1407, and Avnet and Benchmark have consented to Defendants’ Motion;

12 WHEREAS, the District Courts in Arizona have approved Avnet’s and Benchmark’s  
13 agreements with Defendants regarding the coordination of discovery, and Avnet, Benchmark, AASI  
14 and Defendants agree to abide by the coordination agreements in this case;

15 WHEREAS, on October 6, 2017, the Recent Opt-Out Plaintiffs objected to the revised  
16 schedule proposed by DPPs, IPPs, Flextronics and Defendants;

17 WHEREAS, on October 10, 2017 the Court held a hearing and ordered the parties to  
18 meet and confer regarding the revised case schedule;

19 WHEREAS, on November 22, 2016, the Court entered an Amended Case Scheduling  
20 Order, setting forth various litigation dates through trial (*see* ECF No. 1405);

21 WHEREAS, since that time, the parties have been making substantial progress on  
22 discovery, expert discovery related to class certification and class certification;

23 WHEREAS, due to the existence of a parallel criminal investigation regarding  
24 electrolytic capacitors and other factors, Plaintiffs have had difficulty scheduling depositions;

25 WHEREAS, due to the parallel criminal investigation and the difficulty scheduling  
26 depositions, Plaintiffs have been forced to travel to Asia to conduct numerous depositions;

1 WHEREAS, Plaintiffs anticipate needing to take additional depositions that cannot be  
2 completed prior to the current fact discovery deadline of November 6, 2017;

3 WHEREAS, Defendants anticipate that they will need additional time than the current  
4 schedule contemplates in order to respond to Plaintiffs' expert reports regarding merits issues and  
5 any potential *Daubert* motions regarding Plaintiffs' expert merits reports, including expert reports  
6 that are likely to be submitted in the Recent Opt-Out Actions;

7 WHEREAS, Defendants are willing to agree to an extension of the close of fact  
8 discovery in exchange for an agreement on a revised schedule that provides Defendants additional  
9 time to complete expert reports regarding merits issues and any potential *Daubert* motions  
10 regarding expert merits reports, including any expert reports submitted in the Recent Opt-Out  
11 Actions;

12 WHEREAS, on September 7, 2017, the Court heard argument on the Direct Purchaser  
13 Plaintiffs' Motion for Class Certification;

14 WHEREAS, also on September 7, 2017, the Court continued the hearing date for IPPs'  
15 Motion for Class Certification until December 21, 2017;

16 WHEREAS, the parties agree that:

- 17 a. All parties will include the Recent Opt-Out Plaintiffs on all service lists;  
18 b. Counsel for the DPPs, IPPs, and Flextronics will consult with the Recent Opt-  
19 Out Plaintiffs with regard to all future deposition scheduling;  
20 c. Within 10 days of this Stipulation, the DPPs shall provide the Recent Opt-Out  
21 Plaintiffs all of the transactional data produced by Defendants in this case and all explanatory  
22 communications regarding the data that have been provided by the Defendants; and  
23 d. Within 10 days of this Stipulation, the Defendants shall provide the Recent Opt  
24 Out Plaintiffs with all of the transactional data produced by third parties in this case;

25 WHEREAS, the parties have not previously sought any adjustments to this schedule;  
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28

WHEREAS, the parties believe these modest adjustments are necessary and appropriate given the status of the litigation and to accommodate the entry into the case of the Recent Opt-Out Plaintiffs; and

WHEREAS, the United States Department of Justice has submitted a letter to the Court suggesting that it intends to file a motion to partially stay discovery and the parties recognize that the resolution of that motion may necessitate a modification of the schedule set forth below.

**THEREFORE, IT IS HEREBY STIPULATED AND AGREED**, by and between the parties, for the following case schedule:

<u>Event</u>	<u>Deadline</u>
Deadline for completion of fact discovery for all parties except the Recent Opt Out Plaintiffs:	March 9, 2018
With respect to depositions, Plaintiffs, except for the Recent Opt Out Plaintiffs, will provide a final list of any depositions Plaintiffs seek prior to the fact discovery cut off by January 12, 2018. To the extent Plaintiffs seek to depose any witness not previously identified or not on Plaintiffs list prior to January 12, 2018, the deposition may only be permitted on a showing of good cause. The Recent Opt Out Plaintiffs will provide a final list of any depositions they seek to take prior to February 23, 2018.	
Deadline for completion of fact discovery for the Recent Opt-Out Plaintiffs	April 9, 2018
Plaintiffs' expert reports on merits	April 9, 2018* *(Flex and the Flex Defendants (collectively, the "Flex Parties") concur that resolution of the Flex Parties' dispute regarding application of the FTAIA to Flex's claims reasonably prior to submission of the Flex parties' expert reports is essential to the efficient and cost-effective resolution of Flex's claims. The

	Flex Parties thus reserve the right to seek an additional extension of the dates proposed herein as necessary to permit resolution of the outstanding FTAIA issues.)
Defendants' expert reports on merits	June 18, 2018 (+ 70 days from Plaintiffs' reports)
Plaintiffs' merits expert rebuttal report	August 2, 2018 (+45 days from Defendants' reports)
Deadline for end of merits expert discovery, Including merits expert depositions	August 31, 2018
Time by which any summary judgment motions must be filed and deadline for filing of <i>Daubert</i> merits expert motions	September 24, 2018**
Time by which any summary judgment oppositions must be filed and deadline for filing of <i>Daubert</i> expert oppositions	October 24, 2018 (+30 days)**
Time by which any summary judgment replies must be filed and deadline for filing <i>Daubert</i> merit expert replies	November 14, 2018 (+21 days)**
Summary Judgment Hearing	December 13, 2018 **  **These dates will only apply to the Avnet and Benchmark cases if the JPML grants Defendants' Motion to Transfer pursuant to 28 U.S.C. §1407
Final Pretrial Conference	January 21, 2019***
Trial	February 19, 2019***  ***AASI does not agree to a trial with the DPPs. These dates will not apply to the Avnet and Benchmark cases.

1 **IT IS SO STIPULATED.**

2  
3 Dated: October 18, 2017

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25 **PURSUANT TO STIPULATION AND FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.**

26 Dated: \_\_\_\_\_

27 \_\_\_\_\_  
28 HONORABLE JAMES DONATO  
UNITED STATES DISTRICT JUDGE

1 Pursuant to Civil Local Rule 5.1(i)(3), I attest that all other signatories listed, and on whose  
2 behalf the filing is submitted, concur in the filing's content and have authorized the filing.

3  
4 Dated: October 18, 2017

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